SECOND SECTION

# CASE OF STOJILKOVIĆ AND OTHERS v. SERBIA

*(Application no. 36274/08)*

JUDGMENT

STRASBOURG

5 March 2013

*This judgment is final but it may be subject to editorial revision.*

**In the case of Stojilković and Others v. Serbia,**

The European Court of Human Rights (Second Section), sitting as a Committee composed of:

Paulo Pinto de Albuquerque, *President,*
Dragoljub Popović,
Helen Keller, *judges,*
and Françoise Elens-Passos, *Deputy Section Registrar,*

Having deliberated in private on 12 February 2013,

Delivers the following judgment, which was adopted on that date:

# PROCEDURE

1. The case originated in an application (no. 36274/08) against the Republic of Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Serbian nationals, Mr Božidar Stojilković ("the first applicant"), Ms Srebrena Stojilković ("the second applicant") and Mr Milutin Aleksić ("the third applicant"), on 24 July 2008.

2. The applicants were represented by Mr D. Vidosavljević, a lawyer practising in Leskovac. The Serbian Government ("the Government") were represented by their Agent, Mr S. Carić.

3. On 29 June 2010 the President of the Second Section decided to give notice of the applications to the Government. It was also decided to rule on the admissibility and merits of the applications at the same time (Article 29 § 1).

4. The Government objected to the examination of the application by a Committee. After having considered the Government's objection, the Court rejects it.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1955, 1962 and 1958 respectively and live in Lebane (the first and the second applicant) and Ćenovac (the third applicant).

6. On 11 March 2002 the Lebane Municipal Court ("the Municipal Court"), ordered "DP Metalna i elektro-industrija 1. Maj Ždeglovo" ("the debtor"), a company from Lebane, to pay the first and the second applicant each 46,399 Yugoslav dinars (YUM) and YUM 9,410 to the third applicant, in respect of the unpaid allowances, together with statutory interest until settlement. The debtor was also ordered to pay YUM 3,200 *in solidum* to all the plaintiffs (20 including the applicants) in respect of legal costs. The judgment became final on the same day.

### A. The enforcement proceedings

7. On 27 April 2002 the applicants filed a request for the enforcement of the above judgment. On 30 April 2002 the Municipal Court issued a writ of execution (*rešenje o izvršenju*).

8. On 11 July 2003 the enforcement proceedings were discontinued in view of the debtor's request for the opening of bankruptcy proceedings (paragraph **Error! Reference source not found.** below).

9. On 4 August 2006, following the applicants' repeated requests, the enforcement proceedings were resumed.

10. On 11 December 2006 the Municipal Court decided to discontinue the enforcement in respect of the second applicant as the debtor submitted evidence (signed written statement certified by the court) that she had withdrawn her claim because she had received compensation within the Redundant Employees Programme (*Program rešavanja viška zaposlenih)*. The second applicant appealed against that decision and on 13 February 2007 the Leskovac District Court ("the District Court") remitted the case to the Municipal Court instructing it to hold a hearing in order to clarify this matter.

11. The Government claimed that the Municipal Court scheduled four hearings, on 4 June, 28 June and 9 July 2007 and on 8 October 2008, for which the applicants failed to appear. However, they did not submit the minutes from those hearings. At the subsequent hearing, held on 27 October 2008, the Municipal Court ordered a financial examination of the outstanding judgment debt in respect of the first and the third applicant. On 30 January 2009 the financial expert submitted his opinion. At the subsequent hearing, held on 23 March 2009, the Municipal Court rejected the first and the third applicant's objections on the financial expert's findings.

12. On 24 March 2009 the Municipal Court discontinued the enforcement proceedings in respect of the second applicant and ordered the enforcement in respect of the first and the third applicant based on the expert's findings.

13. On 31 March 2009 the first and the third applicant appealed against that decision, in particular regarding the expert's findings. The second applicant did not appeal. On 17 July 2009 the District Court upheld the decision of 24 March 2009.

14. On 24 March 2010 the outstanding judgment debt was paid to the first and the third applicant.

### B. The status of the debtor

15. On 26 March 2002 the debtor submitted a request for the opening of bankruptcy proceedings. On 24 October 2003 the Leskovac Commercial Court rejected that request. On 15 January 2004 the High Commercial Court upheld that decision.

16. On 17 July 2007 the debtor was privatised.

17. The sales contract was annulled on 30 October 2008. As of that date, the debtor still consisted of predominantly socially/State-owned capital.

18. On 30 April 2010 the Leskovac Commercial Court initiated bankruptcy proceedings. It appears that they are still pending.

## II. RELEVANT DOMESTIC LAW

19. The relevant domestic law was outlined in the case of *R. Kačapor and Others v. Serbia*, nos. 2269/06 *et al*., 15 January 2008, §§ 57-64 and §§ 71-76.

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

20. The applicants complained of the non-enforcement of the final judgment of 11 March 2002 in their favour. They relied on Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention.

Article 6, in so far as relevant, provides:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

Article 1 of Protocol No. 1 to the Convention reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

### A. Admissibility

#### *1. As regards the first and the third applicant*

21. The Court notes that on 24 March 2010 the final judgment of 11 March 2002 was fully enforced in respect of the first and the third applicant (paragraph **Error! Reference source not found.** above).

22. In view of that, it is necessary to examine whether those applicants could still claim to be victims within the meaning of Article 34 of the Convention. The Court has always held that a decision or measure favourable to an applicant is not in principle sufficient to deprive him of his victim status unless the national authorities have acknowledged, either expressly or in substance, the alleged breach and afforded appropriate and sufficient redress (see *Bulović v. Serbia*, no. 14145/04, § 39, 1 April 2008).

23. Since the authorities in the present case failed to provide the applicants with an acknowledgment of the violations alleged or, indeed, compensation for any non-pecuniary damage suffered, the Court finds that they may still claim to be victims within the meaning of Article 34 of the Convention in relation to the period during which the judgment remained unenforced (see *Dubenko v. Ukraine*, no. 74221/01, § 36, 11 January 2005).

24. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible in respect of the first and the third applicant.

#### *2. As regards the second applicant*

25. The Government submitted that this part of the application should be rejected on non-exhaustion grounds. The second applicant has withdrawn her enforcement claim before the domestic courts and has further failed to appeal against the decision of the

Municipal Court of 24 March 2009 on the discontinuation of the enforcement proceedings (paragraphs **Error! Reference source not found.** and 13 above).

26. The second applicant disagreed. She maintained that she had never withdrawn her enforcement claim.

27. The Court reiterates that the purpose of Article 35 § 1 is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to it (see, *inter alia*, *Civet v. France* [GC], no. 29340/95, § 41, ECHR 1999-VI). The rule is based on the assumption that the domestic system provides an effective remedy in respect of the alleged breach. The burden of proof is on the Government claiming non-exhaustion to satisfy the Court that an effective remedy was available in theory and in practice at the relevant time; that is to say, that the remedy was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement (see, amongst other authorities, *T. v. the United Kingdom* [GC], no. 24724/94, § 55, 16 December 1999).

28. Turning to the present case, the Court notes that on 24 March 2009 the Municipal Court discontinued the enforcement proceedings in respect of the second applicant (paragraph **Error! Reference source not found.** above). That decision was amenable to an appeal to the District Court. However, the applicant failed to lodge it. In these circumstances, the Court considers that the second applicant failed to use all available domestic remedies.

The Government's objection is thus well-founded and the application in respect of the second applicant must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

### B. Merits

29. The Government argued that the delay in the enforcement proceedings had been caused by the complexity of the case and by the fact that the bankruptcy proceedings had been initiated against the debtor. They further maintained that the applicants had also contributed to the delay as they had failed to appear for scheduled hearings (paragraph **Error! Reference source not found.** above).

30. The applicants disagreed.

31. The Court reiterates that the execution of a judgment given by any court must be regarded as an integral part of a "hearing" for the purposes of Article 6 (see *Hornsby v. Greece*, no.18357/91, § 40, 19 March 1997). The Court also recalls its extensive case-law concerning the non-enforcement or the delayed enforcement of final domestic judgments (see, amongst many other cases, *Jeličić v. Bosnia and Herzegovina*, no. 41183/02, §§ 38-39, ECHR 2006-XII; *R. Kačapor and Others*, cited above, §§ 106-116; *Tacea v. Romania*, no. 746/02, 29 September 2005; and *Yuriy Nikolayevich Ivanov v. Ukraine*, no. 40450/04, §§ 51-57, 15 October 2009).

32. The Court notes that the domestic judgment under consideration in the present case remained unenforced for six years (the period before the ratification of the Convention by the respondent State on 3 March 2004, being outside the Court's jurisdiction *ratione temporis*, has not been taken into account). As regards the Government's argument that the delay was caused by the complexity of the enforcement proceedings, the Court notes that the final judgment of 11 March 2002 ordered the

payment of monetary compensation to the applicants and the only issue that had to be determined in the enforcement proceedings was the precise amount of the outstanding judgment debt, in particular the amount of the accrued default interest. The financial expertise was conducted and the Municipal Court held two hearings concerning this matter (paragraph **Error! Reference source not found.** above). Thus, it cannot be concluded that the enforcement proceedings involved particularly complex issues.

Furthermore, as regards the applicants' alleged failure to appear at the scheduled hearings, the Government did not submit any evidence in this regard, such as, relevant copies from the enforcement file. Even assuming that this is true, there is no justification for the rest of the delay.

Finally, as regards the Government's claim that the bankruptcy proceedings against the debtor caused some delay in the enforcement, the Court notes that the bankruptcy proceedings were initiated only on 30 April 2010 (paragraph **Error! Reference source not found.** above), after the final judgment under consideration in the present case had been fully enforced.

In view of the above, the Court finds that there has been a breach of Article 6 of the Convention and of Article 1 of Protocol No. 1 to the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

### A. Damage

34. The first and the third applicant claimed the payment of outstanding judgment debt in respect of pecuniary damage and 3,600 euros (EUR) each in respect of non-pecuniary damage. The Government considered the claims excessive and unjustified.

35. The Court notes that in the meantime the final judgment of 11 March 2002 has been fully enforced in resepct of these applicants. The Court, therefore, rejects the claim for pecuniary damage. As regards non-pecuniary damage, the Court considers that the applicants sustained some non-pecuniary loss arising from the breaches of the Convention found in this case. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court decides that the applicants' request for non-pecuniary damage must be met in full. Therefore, it awards the first and the third applicant EUR 3,600 each in respect of non-pecuniary damage.

### B. Costs and expenses

36. The first and the third applicant claimed EUR 3,400 for the costs and expenses incurred before the Court. The Government considered the amount excessive.

37. In accordance with the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). Regard being had to the information in its possession and the above criteria,

the Court considers it reasonable to award the first and the third applicant EUR 450 under this head.

### C. Default interest

38. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application in respect of Ms Srebrena Stojilković inadmissible;

2. *Declares* the remainder of the application admissible;

3. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention due to the delayed enforcement of final domestic judgment in respect of Mr Božidar Stojilković and Mr Milutin Aleksić;

4. *Holds*
   (a) that the respondent State is to pay, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 3,600 (three thousand six hundred euros) each to Mr Božidar Stojilković and Mr Milutin Aleksić, plus any tax that may be chargeable, in respect of non-pecuniary damage; and
      (ii) EUR 450 (four hundred fifty euros) together, to Mr Božidar Stojilković and Mr Milutin Aleksić, plus any tax that may be chargeable to them, in respect of cots and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 5 March 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Paulo Pinto de Albuquerque
President